

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139(JKF)
. .
W.R. GRACE, .
. 5414 U.S. Steel Tower
. 600 Grant Street
. Pittsburgh, PA 15219
Debtor. .
. December 20, 2010
. 4:03 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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- - -

1 THE COURT: Good afternoon, everyone. This is the
2 matter of W.R. Grace, Bankruptcy Number 01-1139. I asked for
3 this status conference to be held so that I can explain
4 something to all parties, and then I will ask the debtor to get
5 in touch with any of the entities who need notice of this and
6 were not able to participate because of the short notice. So,
7 would you all please identify yourself? I don't have a list of
8 participants. So let's start with the debtor, please.

9 MS. BAER: Good afternoon, Your Honor. Janet Baer on
10 behalf of the debtors.

11 MR. DONLEY: John Donley also on behalf of the
12 debtors.

13 MS. MAKOWSKI: Your Honor, Kathleen Makowski from
14 Pachulski, Stang on behalf of the debtors.

15 MR. HIGGINS: Roger Higgins on behalf of the debtors.

16 MS. BOLL: Deanna Boll on behalf of the debtors.

17 THE COURT: All right. The unsecured creditors
18 committee.

19 MR. KRUGER: Lewis Kruger and Arlene Krieger for the
20 committee.

21 THE COURT: The asbestos personal injury committee.

22 MR. LOCKWOOD: Peter Lockwood on behalf of the
23 committee.

24 MR. HURFORD: Mark Hurford on behalf of
25 (indiscernible).

1 MR. HORKOVICH: Bob Horkovich for the insurance
2 counsel for the committee.

3 THE COURT: All right. The property damage
4 committee.

5 MR. KRAMER: Good afternoon, Your Honor. Matt Kramer
6 from Bilzin Sumberg.

7 THE COURT: The futures rep.

8 MR. FRANKEL: Good afternoon, Your Honor. Roger
9 Frankel for David Austern, the PI future rep.

10 THE COURT: All right. It's a little difficult to
11 figure out who else to ask to participate first, so perhaps, if
12 I can just get -- let's start with insurers.

13 MR. BROWN: Michael Brown on behalf of Geico and
14 Republic.

15 MS. DeCRISTOFARO: Elizabeth DeCristofaro on behalf
16 of Continental Casualty Company.

17 MR. GLOSBAND: Dan Glosband also for Continental
18 Casualty.

19 MR. IFFT: Richard Ifft for Maryland Casualty and
20 Zurich.

21 MR. LONGOSZ: Edward Longosz also on behalf of
22 Maryland Casualty.

23 THE COURT: Any other insurers?

24 MR. McDONALD: Yes, Your Honor. John McDonald,
25 O'Melveny & Myers, for Century Indemnity Company.

1 THE COURT: Any others?

2 MR. RICH: Yes, Your Honor. Alan Rich for the
3 property damage FCR.

4 THE COURT: Okay. Anyone else on, please?

5 MR. COBB: Your Honor, Richard Cobb on behalf of
6 certain bank lenders.

7 MR. ROSENBERG: Your Honor, Andrew Rosenberg, Rebecca
8 Zubaty, on behalf of certain bank lenders.

9 MR. MONACO: Frank Monaco and Kevin Mangan on behalf
10 of the State of Montana.

11 MR. BLABEY: Your Honor, David Blabey on behalf of
12 the equity committee.

13 THE COURT: I'm sorry. Whoever was speaking, I
14 couldn't understand you. I apologize.

15 MR. BLABEY: I apologize, Your Honor. David Blabey
16 on behalf of the equity committee.

17 THE COURT: Thank you.

18 MR. WESTBROOK: Your Honor, Ed Westbrook on behalf of
19 the ZAI claimants.

20 MS. CASEY: Your Honor, Linda Casey on behalf of BNSF
21 Railway.

22 MR. TURETSKY: Your Honor, David Turetsky of Skadden
23 on behalf of Sealed Air.

24 MR. COCO: Your Honor, Nathan Coco and David
25 Rosenbloom on behalf of Fresenius.

1 MR. COOK-DUBIN: Your Honor, Jesse Cook-Dubin on
2 behalf of the Scotts Company.

3 MR. KOZYAK: John Kozyak on behalf of Anderson
4 Memorial.

5 THE COURT: Anyone else?

6 MR. PEIRCE: Steve Peirce on behalf of New Star.

7 MR. McDONALD: Brian McDonald on behalf of the Libby
8 claimants.

9 MR. HOGAN: Daniel Hogan on behalf of the Canadian
10 Zonolite claimants.

11 THE COURT: Anyone else?

12 MR. O'NEILL: James O'Neill on behalf of Grace.

13 THE COURT: Anyone else?

14 (No audible response)

15 THE COURT: Okay. Folks, the bad news is that I
16 don't think I'm going to get this opinion finished by the end
17 of the year. We are very close, but, frankly, I'm just not
18 happy with a couple of the sections of this opinion and I think
19 it's just going to take a little more time. And given the
20 problem with Christmas vacations, use or lose leave time and so
21 forth, I just don't think it's going to happen.

22 My major concern, of course, is the agreement that
23 the CCAA representative counsel and others arrived at
24 concerning the ZAI -- Canadian ZAI claimants and the fact that
25 this agreement may be set to expire December 31st if there's no

1 confirmation order entered by that day. And that's the reason
2 for this status call. I just don't think it's going to happen.
3 We've been pushing, but I just realistically don't think it
4 will happen.

5 I do think it will happen in January because,
6 frankly, I think we'll all jump out the window if it doesn't
7 happen by January. And since we're on the 54th floor that
8 would hurt. So, as a result, I believe that January is
9 workable and doable, but I'm concerned about what the effect of
10 the agreements in Canada will be. So, that's the reason I
11 called this status call. Anybody want to address it?

12 MS. BAER: Your Honor --

13 MR. HOGAN: Your Honor -- sorry, Jan. Go ahead.

14 MS. BAER: Okay. Jan Baer on behalf of Grace. Your
15 Honor, pursuant to the ZAI minutes of settlement, it provides
16 that, unless otherwise agreed to by the parties, the settlement
17 agreement expires or becomes null and void if there's no
18 confirmation order entered by the end of the year. I would
19 hope that if, in fact, we're just a couple weeks away from
20 getting the confirmation order entered that parties wouldn't
21 take advantage of that situation to blow things up. And I
22 would hope that Canada would be reasonable in potentially
23 giving a short extension here so that we could get this done.
24 The debtors certainly are -- don't want to have the Court do a
25 lot of work and start over again because of this particular

1 condition not being met.

2 THE COURT: Mr. Hogan?

3 MR. HOGAN: Your Honor, Dan Hogan here --

4 THE COURT: Yes, sir.

5 MR. HOGAN: -- on behalf of the Canadian ZAI
6 claimants, both PI and PD. I have a couple concerns, Your
7 Honor. I agree generally with what Jan said. However,
8 obviously, I've got no explicit authority or otherwise to make
9 a representation and make that agreement at this time. I will
10 endeavor, of course, to procure such an agreement or an
11 extension, but there's a couple concerns that I have.

12 Number one, the approval that occurred before the
13 CCAA was, of course, of the amended and restated minutes of
14 settlement, and a condition of those minutes as you've stated
15 is that if it's not done by this date, the 31st of 2010,
16 December, that it could possibly be blown up. And, so I have
17 to go back to my counsel and find out if it's going to require
18 further approval by the CCAA if they were to make such an
19 agreement to extend that deadline.

20 And, so I just throw that out as an initial threshold
21 issue that we're going to have to figure out before we can even
22 make a representation about whether we can agree to a short
23 extension. And that's really all I could say at this point,
24 Your Honor.

25 THE COURT: Okay. Paragraph 20 of that agreement,

1 Mr. Hogan, does say unless otherwise agreed to by the parties
2 hereto, then in the event of any of the following, and one of
3 those is that the confirmation order isn't entered by December
4 31st, then the minutes will be null and void. So, it seems
5 that the agreement as it was already approved provides the
6 discretion of the parties to make that extension if necessary.
7 But, I appreciate the fact that you need to run that by your
8 counsel.

9 MR. HOGAN: Of course.

10 THE COURT: I'm sorry?

11 MR. HOGAN: I was just agreeing with you, Your Honor.

12 THE COURT: Okay. The only alternative that this
13 Court has and, frankly, I'm not comfortable doing it, is to
14 enter an order and then do the opinion later, you know, within
15 a couple of weeks. And, frankly, I don't think that does any
16 good since this has to be a recommendation to the District
17 Court one way or the other, as opposed to a final order of this
18 Court because of the need for the injunction if the plan is
19 confirmed -- the 524(g) injunction if the plan is confirmed.

20 So, I really think -- I think the ball just has to be
21 here and I just don't think it's going to get done in that
22 short time frame. So, I -- all I can tell you is we're trying,
23 but I don't think it's going to do it. So, whatever you folks
24 need to do with respect to this agreement I simply wanted to
25 give you a heads up because I believe January will be -- a day

1 in January. Which one, I don't know, but a day in January, a
2 confirmation order of some sort and the opinion that goes with
3 it will be entered, but probably not before then. That's --

4 MS. BAER: Your Honor --

5 THE COURT: Yes, I'm sorry.

6 MS. BAER: -- from the debtor's perspective, Your
7 Honor, we'll certainly work with Canada to do everything we can
8 to get this extended so that things do not become much more
9 complicated, because if we don't get it extended we then may be
10 faced with having to revise the plan to sort of remove some of
11 these Canadian conditions or the assumption that there will be
12 a minutes of settlement, which we, of course, could do.

13 THE COURT: Okay. That was really the only thing
14 that I wanted to alert you folks about. So, with that said,
15 unless someone else has an issue to raise, that was the only
16 thing that I wanted to cover.

17 MR. COBB: Your Honor, this is Richard Cobb on behalf
18 of certain bank lenders. Your Honor, I wanted to note for the
19 Court's calendar that we will be filing an objection to the
20 sixth plan modification that was filed by the debtors last
21 week. It was not filed in compliance with 1127(f)(2). So,
22 Your Honor, if -- just to give you a heads up, Your Honor.

23 THE COURT: Oh, okay. I am glad you raised that
24 because I thought that the sixth amended was an agreement, so I
25 misunderstood. You're talking simply about the provision of

1 when the interest is going to be paid?

2 MR. COBB: Your Honor, the provision I believe states
3 that the interest will continue to run while on appeal.
4 However, Your Honor, without consulting with us, without any
5 meet and confer, the debtors unilaterally filed an amendment to
6 the plan that provides that interest will not be paid on the
7 effective date. However, in the event that we appeal, the
8 interest would continue to run.

9 THE COURT: I'm sorry, Mr. Cobb. You faded out. It
10 says that in the event -- and I lost you after in the event.

11 MR. COBB: Your Honor, what I believe the debtors are
12 proposing as a modification to the plan is that interest will
13 now run on the effective date in the event that we file an
14 appeal of the confirmation order assuming the -- Your Honor
15 does not agree with us with regard to our plan objection. But,
16 Your Honor, interest will not be paid on the effective date. I
17 -- and, again, Your Honor, this was filed without any meet and
18 confer with us, so I'm not certain precisely why it was filed.

19 THE COURT: Okay. Well, perhaps we should address
20 that because, quite frankly, that's going to be a problem.

21 MS. BAER: Your Honor, the amendment was filed by the
22 debtors in order to address the concern that was raised in
23 court last week. And that concern had to do with the fact that
24 the way the plan was originally drafted it did not appear as
25 though if there was an appeal, if there wasn't an immediate

1 resolution or payment with a final order, that interest would
2 not continue to accrue and therefore, there was impairment.

3 Your Honor, we simply eliminated that issue by
4 providing in the amendment that now interest does continue to
5 accrue and therefore, you know, when there is a final order,
6 that interest will have been running and there will then
7 therefore be no impairment. They will receive whatever
8 interest the Court decides they are entitled to receive.

9 MR. DONLEY: Judge, this is John Donley for the
10 debtor. Your Honor, we have met and conferred with the banks
11 as you directed to try to resolve the issue. There were
12 discussions with Mr. Rosenberg. And I don't want to go into
13 those with the Court, but we did satisfy -- we did, in good
14 faith, undertake those discussions and when it was clear to us
15 that we couldn't achieve an overall resolution at a minimum
16 what we wanted to do was address the concern Mr. Cobb had
17 addressed in court on Monday the 13th, which was specifically
18 his objection to the plan not paying interest from the
19 effective date forward to whatever date an appeal runs or a
20 final order on allowance or disallowance becomes final. That's
21 why we amended the plan to address what we thought precisely
22 was the objection and what we heard from him and understood
23 from the Court at that hearing --

24 THE COURT: Well, look --

25 MR. DONLEY: -- which would pay the non-default rate

1 after the effective date -- to continue paying the
2 non-default contract rate after the effective date.

3 THE COURT: Well, yes, I think -- I mean, the amount
4 of the interest to at least say that the sum interest is going
5 to be paid -- and you can, you know, can fight about the rate.
6 I don't want to get into the issue about the rate. But, to at
7 least say that there will be interest paid is a start. But,
8 frankly, I'm not at all sure that not paying the interest on
9 the amount of the claim that you concede -- because the amount
10 of the claim doesn't seem to be in dispute -- so not paying
11 interest on the effective date may still be an impairment.

12 So, it seems to me that to fix this, to make sure you
13 have a confirmation order, the debtor is going to have to pay
14 the interest on the allowed claim at least in the contract rate
15 and then, you know, the difference between the contract rate
16 and whatever else you want to fight about obviously could be
17 reserved somewhere pending a final order if it's not ordered in
18 this confirmation order, you know, what the rate has to be.
19 But, I don't think the debtor gets out of the impairment issue
20 by deferring interest. So, that's going to be -- it's --

21 MR. COBB: Your Honor, it's Richard Cobb. That's
22 precisely my point. And, Your Honor, although there was a meet
23 and confer with regard to settling the overall interest issue,
24 there was no discussion with regard to payment of the interest
25 on the effective date.

1 THE COURT: Well, okay.

2 MR. COBB: So, Your Honor, I guess we can leave it up
3 to the debtors.

4 MR. DONLEY: We hear you loud and clear, Your Honor.
5 We'll address this with the --

6 THE COURT: Please state your name.

7 MR. DONLEY: -- the client's not on the line, but
8 we'll address this with them --

9 THE COURT: It's Donley.

10 MR. DONLEY: -- promptly.

11 THE COURT: Okay. Yes, I understand that, but I
12 believe it's going to be an issue. So, okay. You'll have at
13 least until the 31st of -- you'll have at least until the 3rd
14 of January, I think, at this point, to get that particular
15 piece resolved. But, if it -- if you don't, then I can't
16 prejudge what's going to happen, but, folks, I think there's
17 going to be an issue.

18 MR. DONLEY: We hear you loud and clear, Your Honor.
19 Ms. Baer and I will get back with the client.

20 THE COURT: Okay. Anyone else have anything to
21 address?

22 (No audible response)

23 THE COURT: One second, please.

24 (Pause)

25 THE COURT: Was it Maryland Casualty that raised an

1 issue or CNA? I apologize, I don't have the draft opinion or
2 the objections in front of me or maybe both that raised the
3 issue about the plan prohibiting access to co-insurers. Is
4 that issue resolved? What I think I'm not clear about in the
5 insurance neutrality provisions that have been agreed upon is
6 whether all issues concerning insurance are now deferred to
7 insurance coverage litigation or whether some of these issues
8 were still live, and I'm just not clear.

9 MR. WISLER: Your Honor, this is Jeffrey Wisler for
10 Maryland Casualty. We did not raise any insurance neutrality
11 issues. Zurich did, but Zurich ultimately settled.

12 THE COURT: Okay. Did --

13 MR. BROWN: And, Your Honor?

14 THE COURT: Yes.

15 MR. BROWN: Your Honor, this is Michael Brown for
16 Geico and Republic. The -- we have the assignment issue
17 pending, but that's the only issue we have pending.

18 THE COURT: Yes, I understood the assignment issue,
19 Mr. Brown. Thank you for that clarification. But I thought
20 that there was -- I just want to be sure that there is still
21 not an issue between insurers as to whether or not this plan
22 prohibits some access by one insurer against another co-insurer
23 and that that issue is resolved by the neutrality agreement.

24 MR. GIANNOTTO: Your Honor, this is Michael Giannotto
25 for CNA. I came on late. I don't think there is any issue --

1 any insurance issues remaining of that nature. Some of the
2 insurers have raised issues in their capacity as creditors and
3 those issues still remain. But, I believe all of the issues
4 raised as insurers -- qua insurers are resolved by the interest
5 neutrality provision, other than the assignment issue that
6 Michael Brown just mentioned.

7 THE COURT: Okay. Then that may take -- perhaps, if
8 that's the case, that will get through one issue that I was
9 really not clear whether or not we needed to still write about.
10 Okay. Having said that, is there anything else anybody else
11 wants to address?

12 (No audible response)

13 THE COURT: Okay, folks, I apologize. We really did
14 try to get this done. I just don't think it's going to happen,
15 so I hope you all have happy holidays and I will see you at the
16 omnibus in January.

17 UNIDENTIFIED ATTORNEY: Thank Your Honor.

18 MS. BAER: Thank you, Your Honor.

19 THE COURT: Thank you. We're adjourned.

20 UNIDENTIFIED ATTORNEY: Thank you, Your Honor. Same
21 to you.

22 * * * * *

23

24

25

C E R T I F I C A T I O N

I, AMY L. RENTNER, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.

/s/ Amy L. Rentner

AMY L. RENTNER

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